

Re: PRA request

From: Hollywood Sunshine (hollywoodsunshinecoalition@yahoo.com)

To: jeanne.min@lacity.org

Date: Tuesday, November 20, 2018, 9:33 AM PST



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Hi again Ms. Min.

I have been advised that it is better to make a firm deadline in order to facilitate the progress of the discussion. Thus if I do not hear from you by **December 10** with a revised response in which you (a) agree to provide all the records requested in a timely manner subject only to allowable exemptions which do not include invocations of CPRA section 6255(a) based on volume of records and (b) provide a factually based estimate of how long it will take to do this then we will begin taking further action to compel compliance. This date is significantly beyond the 24 days allowed by the law for making a determination which is reasonable given the upcoming Thanksgiving holidays.

Further, in addition to the points I made yesterday about the weighty public interest implicated by these emails, I hope you will consider the breaking news and nationwide viral coverage of the newly discovered fact that Ivanka Trump also has used a secret private email account to conduct public business. The case that the release of Mr. O'Farrell's private emails conducting public business are of paramount public interest will be very easy to make in the current news climate. Meeting your burden of proving that the release is **CLEARLY** of less importance than your office's clerical burden will not be so easy.

Also, please consider that as long as Mr. O'Farrell maintains these public records in a Gmail account they aren't subject to the city of Los Angeles's record retention laws. This makes it even more crucial that they be released to the public so that they are not lost to history. I hope that you will have advised Mr. O'Farrell to refrain from deleting any emails from that account until such time as this request is deemed to be complete by all interested parties.

Thank you again for your attention and we look forward to hearing from you well before December 10.

HSC

On Monday, November 19, 2018, 1:08:25 PM PST, Hollywood Sunshine <hollywoodsunshinecoalition@yahoo.com> wrote:

Hi Ms. Min and thank you for answering my request in a timely manner.

First of all this request is perfectly focused. In the context of the public records act a request is focused when it "reasonably describes an identifiable record or records" per Section 6253(b). There is no question that this request is focused. Since it is focused it is a fortiori "sufficiently focused," contra your claim that it is not.

Further, Section 6255(a) requires a balancing test precisely because the legislature did not presume to know in advance what kinds of public interests might be touched on in connection with requests such as this one. It's pretty clear that when you state as a self-evident proposition that the public interest in fulfilling my request is **clearly** outweighed by the public interest in your office not having to do some clerical work you're not in fact taking into account the astonishingly heavy public interest in releasing these records. It's evident that you're treating section 6255(a) as some kind of absolute exemption that requires nothing more from you than a vague mention when in fact it is nothing of the kind. A citation of Section 6255(b) requires an honest and forthright accounting of the public interest on both sides of the issue. It's clear that you have done nothing of the sort.

Consider that no one that we have talked to, not reporters from the Los Angeles Times or any other mainstream news source that covers City Hall, not fringe journalists, not bloggers, not activists, not even many staff from other council offices universally, knew that Mr. O'Farrell was conducting city business with this covert gmail account. The public interest in knowing what he is doing there, what kinds of business he chooses to conduct covertly rather than on the public record, in knowing who contacts him through this private address and why, whether his donors have more favored access through this email address to him or that they do not, all of these issues and many, many more underlie the absolutely unparalleled public interest in gaining access to all of these emails.

When you cite section 6255(a) as if it automatically allows you to decline to search just because you have an unsubstantiated theory that it might be too much work for your office you're violating both the spirit and the letter of the California Public Records Act. It is for these reasons that we hope you will reconsider your claim that whatever interest the city of Los Angeles has in not doing some clerical work **CLEARLY** outweighs the public's interest in seeing all of these emails.

Not only that, but given that no one outside of Mr. O'Farrell's inner circle even suspected the existence of this account it is absolutely unreasonable of you to expect that we could give you specific search terms. How are we to even know what kinds of things Mr. O'Farrell talks about in this account? Therefore how can we give you search terms? Again, this is precisely why the legislature has not and will not make "too many records" an absolute exemption, not subject to any kind of balancing test. In some cases, such as this one, the avoidance of any amount of clerical work is of lesser public interest than the disclosure of some records.

These are the reasons why your citation of section 6255(a) will not stand scrutiny. We hope you won't continue to insist on this citation. While you are thinking it over though, in the interest of moving along and getting some idea of what's going on with that account, I at least am willing to tentatively limit the request by time.

In that spirit, will you please begin collecting records from July 1, 2013 through December 31, 2013 and also January 1, 2018 through August 31, 2018. Once we get these and see how many there are and what they are about it is possible, although not certain, that we will be able to provide you with specific search terms.

Thank you for your anticipated compliance with this fundamental right granted to we the people by the Constitution of the great state of California.

On Monday, November 19, 2018, 12:37:52 PM PST, Jeanne Min <jeanne.min@lacity.org> wrote:

To Hollywood Sunshine Coalition:

This is in response to your California Public Records Act (CPRA) request of November 7, 2018, in which you ask for copies of all emails to and from mitchof13@gmail.com from July 1, 2013 to the present.

You are correct that under the City of San Jose case we are required to produce emails related to City business—not personal emails—even though they were sent or received using a private email account; and our Office is, of course, prepared to do so.

However, your current CPRA request is not sufficiently focused. Satisfying your current request would require us to review an enormous volume of emails, cull many, if not, most of the emails because they are personal and not related to City-business, review the still large volume of remaining emails for exemptions, and then make any redactions as appropriate. Our Office is not required to fulfill the request under the balancing test in Government Code section 6255 because the public interest in producing the records—given the work required to satisfy the overly broad request—is clearly outweighed by the public interest in not producing the records.

We are prepared to work with you to focus your request into something manageable. For example, if you provided specific search terms and a time frame we could use that to cull the volume of documents while retaining the smaller number of documents pertaining to City-related business that you are interested in.

Thank you for your consideration.

Sincerely,
Jeanne Min

On Wed, Nov 7, 2018 at 8:51 PM Hollywood Sunshine <hollywoodsunshinecoalition@yahoo.com> wrote:

Good evening Councilmember O'Farrell,

On behalf of the Hollywood Sunshine Coalition I am making this request under the public records act for copies of all emails to and from your account at mitchof13@gmail.com from July 1, 2013 onward to the present day. It's clear from our work that you use this account to conduct public business. As I am sure you are aware the California Supreme Court found last year in City of San Jose that the private email accounts of public officials such as yourself used to conduct public business are subject to disclosure under the law.

Since this is a gmail account it will be very easy for you to export these emails in mbox format using Google Takeout, and it is this form that we will need to have these emails.

Thank you for your anticipated compliance with this fundamental right granted to we the people by the Constitution of the great state of California.

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